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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/364,375	07/30/1999	RONEN CHAYAT	ITL.0151US (P6593)	9363
21906 7590 11/01/2007 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER HEWITT II, CALVIN L	
			ART UNIT 3621	PAPER NUMBER
			MAIL DATE 11/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/364,375

Applicant(s)

CHAYAT, RONEN

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-15, 17-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 17-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Status of Claims

1. In view of the Appeal Brief filed on July 20, 2007 PROSECUTION IS HEREBY REOPENED. There are no new grounds of rejection.
2. Claims 1-4, 6-15, 17-26 and 28-30 have been examined.

Response to Amendments/Arguments

3. In the Appeal Brief filed on July 20, 2007 (Appeal Brief, page 12, "A"), Applicant argued that claim 2 was not rejected under in the 35 U.S.C 112 § second paragraph (Appeal Brief, page 12, lines 10-13). However, this is not the case as the Final Office Action dated April 23, 2007 recites:

Claims 2, 3, 6-12, 14, 15, 17-23, 26, and 28-30 are directed to methods of transmitting data packets using a method other than the algorithm prescribed in claim 1 which teaches giving routing priority to packets that take less time to process...

Claim 2, for example, recites processing packets according to security parameters... (emphasis added)

On the other hand, the statement of the rejection did not include a reference to claim 2. Therefore, in order to resolve any ambiguity regarding the rejection to claim 2 (and claim 14) under 112 second paragraph, the Examiner is issuing a

new Final Office Action with a correct statement of the rejection (Note: The Examiner has not changed the grounds of rejection nor provided new art).

Applicant is of the opinion that the prior art does not teach transmitting packets that take less time to process before packets that take more time to process. The Examiner respectfully disagrees. It has been held that a prior art reference is to be considered not for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill of the art (*In re Delisle*, 160 USPQ 806 (CCPA 1969); see also *Lamont v. Berguer*, 7 USPQ2d 1580 (BdPatApp&Int 1988); *In re Shepard*, 138 USPQ 148 (CCPA 1963); *In re Bozek*, 163 USPQ 545 (CCPA 1969)). Cidon et al. teach a high priority packet/ low priority packet protocol where low priority packets (i.e. packets exceed a maximum size) are pre-empted by high priority packets (column 4, lines 5-30; column 8, lines 12-16). Cidon et al. do not specifically define "high priority". Taniguchi teaches determining whether to transmit or abandon a packet by filtering the packet (column 12, lines 52-56; column/line 18/62-19/8) according to packet size (column 19, lines 1-8). Therefore, the references together suggest establishing packet priority based on packet size ('841, column 19, lines 1-8) where low priority packets are defined by packets that exceed a maximum size ('473, column 4, lines 5-30) and, high priority packets are at least packets that are less than the maximum size.

The Examiner maintains the rejection to Applicant's claims.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 3, 6-12, 14, 15, 17-23, 26, and 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, 3, 6-12, 14, 15, 17-23, 26, and 28-30 are directed to methods of transmitting data packets using a method other than the algorithm prescribed in claim 1 which teaches giving routing priority to packets that take less time to process. Claim 2, for example, recites processing packets according to security parameters, while claims 3 and 12 recite executing a priority according to "first-in-first-out" and "round-robin" rules, respectively. Therefore, Applicant's method is unclear to one of ordinary skill (*In re Zletz*, 13 USPQ2d 1320 (Fed. Cir. 1989)).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6-15, 17-26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cidon et al., U.S. Patent No. 5,343,473 in view of Taniguchi, U.S. Patent No. 6,222,841.

As per claims 1-4, 6-15, 17-26 and 28-30, Cidon et al. teach receiving packets of at least two types, determining which type of packet takes more time to process, identifying a packet of lower priority (e.g. a first type) that takes more time to process, identifying a packet of a higher priority (e.g. second type) that takes of the higher priority (e.g. less time to process) and transmitting packets of the lower priority (e.g. second type) before packets of the first type (column 1, lines 50-53; column 4, lines 5-30; column 8, lines 13-16). Cidon et al. also teach FIFO (column 1, lines 61-65), monitoring a queue in order to fetch one type of packet over another (column 1, lines 50-53; column 8, lines 13-16). Regarding linking packets (e.g. claim 7) it is inherent to packet switching that data to be transmitted from a sending node over a network is broken up into packets, the packets are routed along different paths on the network, and reassembled at receiving node. In order to be reassembled, the packets are necessarily linked. Cidon et al. do not explicitly recite how high priority is assigned. Taniguchi teaches a method for transmitting data packets across a network (abstract)

based on a priority (figure 14; column/line 16/19-17/17; column/line 22/18-23/6) such as processing time (e.g. packet size, number of transmitted bytes) (column/line 18/62-19/8) or other user defined parameter (column 4, lines 3-10; column 16, lines 18-33; column 18, lines 14-32). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Cidon et al. and Taniguchi in order more effectively distribute audio and video data over a packet switching network ('841, column 7, lines 5-15).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

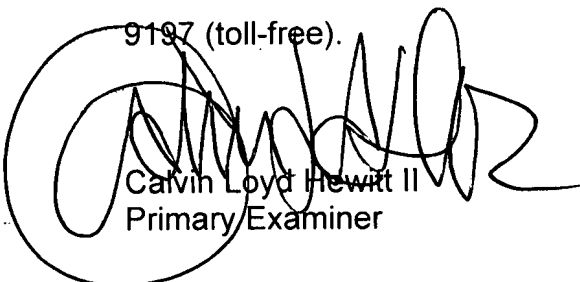
10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer, can be reached at (571) 272-6779.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-

9197 (toll-free).



Calvin Loyd Hewitt II
Primary Examiner

October 25, 2007

Andrew Fischer
Supervisory Patent Examiner



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